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REPORT

OF THE

COMMITTEE

OF THE

BAR OF LOWER CANADA,

Section of the District of Quebec.

WITH REFERENCE TO THE CONDUCT PURSUED BY TWO OF THE JUDGES OF THE COURT OF APPEALS TOWARDS ONE OF THE ADVOCATES OF THE QUEBEC SECTION, DURING THE OCTOBER TERM, 1851.

QUEBEC:
PRINTED AT THE QUEBEC GAZETTE OFFICE.
1851.

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BAR OF LOWER CANADA.

SECTION OF THE DISTRICT OF QUEBEC.

QUEBEC, 14th October, 1851.

In pursuance of a requisition addressed to the *Bâtonnier*, a special meeting of the members of the Bar of the section of the District of Quebec, was held this day in the Advocates' Room, for the purpose of taking into consideration the expediency of adopting measures in relation to the conduct of two of the Judges of the Court of Queen's Bench, towards one of the Advocates of this section, during the October term of that Court in Appeal matters, held in Montreal.

GEORGE OKILL STUART, Esquire, *Bâtonnier*, in the chair.

CHARLES G. HOLT, Esquire, submitted to the meeting a statement of the occurrences which had taken place in Montreal, during the October term of the Court in Appeal matters, and it was thereupon, on

Motion of DUNBAR ROSS, Esquire, seconded by ARCHIBALD CAMPBELL, Junior, Esquire,

Resolved,—That the written statement of facts, submitted to the Bar by Mr. Holt, be referred to a Committee of five members, with instructions to report thereon; and that the members of the Bar who were present in the Court of Appeals, in Montreal, when the facts mentioned by Mr. Holt occurred, be requested to commit to writing, and lay before the Committee, a statement of what took place in their presence.

Messrs. CHABOT, DUNBAR ROSS, BAILLAIRGÉ, ULRIC J. TESSIER, and POPE, were then appointed a Committee to carry out the foregoing resolution.

13TH NOVEMBER, 1851.

Special meeting of the members of the section of the District of Quebec.

GEORGE OKILL STUART, Esquire, *Bâtonnier*, in the chair.

The Committee appointed on the fourteenth of October last, presented to the Bar the following Report.

REPORT.

The Committee appointed to report on the written statement of facts submitted to the Bar by Mr. Holt, and to obtain from the members of the Bar, who were present in the Court of Appeals, in Montreal, when the facts mentioned by Mr. Holt occurred, a statement of what took place in their presence, have now the honor to report,—

That in pursuance of the resolution adopted by this section of the Bar, they took immediate measures for obtaining from the several members thereof, who were present in the Court of Appeals, in Montreal, when the facts narrated by Mr. Holt occurred, the desired statements, which, together with that of Mr. Holt, they now submit.

These statements have been obtained from the Honorable René Edouard Caron, Queen's Counsel, George Okill Stuart, John Urquhart Ahern, and George Irvine, Esquires—the first three being the only members of this section who were present in the Court during the occurrence of the facts disclosed in Mr. Holt's statement; while that of Mr. Irvine details what took place on the closing of the same term, and which, as it relates to the matters which have occasioned the appointment of your Committee, is of much importance.

The statement of Mr. Holt is as follows:—

COURT OF QUEEN'S BENCH,

OCTOBER TERM, 1851.

WEDNESDAY, October 1st.

PRESENT:—Mr. Chief Justice ROLLAND,
Mr. Justice PANET,
" " AYLWIN.

The Clerk of the Court called the case of—

MALONE—Appellant,

vs.

TATE—Respondent.

Messrs. HOLT and IRVINE, for the Appellant.
JOHN U. AHERN, Esq., for the Respondent.

Mr. Justice AYLWIN,—"The attention of the Court has been directed to the manner in which the factum of the Appellant in this cause has been drawn up. The Court has to remark, and feels itself called on to censure, the tone of that document. The style is light and flippant, and such as never should be used in addressing a Court of Justice.

"I refer particularly to page 6, where no less than three notes "of exclamation are to be found. This may do very well in a "newspaper. I speak knowingly, for I once edited a newspaper "myself, and know what these things mean, but it cannot be tole- "rated in this Court.

MR. HOLT.—"The Appellant's attornies beg to state, that "they certainly never thought, in drawing their case, that they "were exposing themselves to a charge of treating the Court with "disrespect. They have desired always to treat this Court res- "pectfully, and must regret that anything in their printed case "should have given rise to a doubt on that point in the mind of "the Court. They are very willing to admit that the style in "which the case in question is written may be faulty, but they "would observe that the notes of exclamation alluded to, were "inserted merely in the same way that *emphasis* or an inflexion of "the voice is used in an oral address to the Court."

The cause was then argued. During the argument, Mr. Chief Justice Rolland, addressing Mr. Holt, emphatically stated, "that "the first count of the Plaintiff's declaration *was a lie*." and informed Mr. Holt "that he need not refer to any English autho- "rities to support it."

SAME DAY.

After the rising of the Court, Mr. Holt being desirous of shewing his willingness to meet the views so expressed by the Court in the case of Malone and Tate, and of removing from one or two other *factums* which had been fyled, in cases in which he had been concerned, such parts or expressions as might be deemed offensive by the Court, desired Mr. Beaudry, Clerk of the Court, to request the Judges, in his (Mr. Holt's) name, permission to look at the factums which he had fyled, that he might correct them, where corrections should be necessary. Mr. Beaudry went into the Judges' Chambers, and in a few minutes returned with their answer—"never mind, we will overlook them," or words to that effect.

MONDAY, 6th October.

PRESENT:—Mr. Chief Justice ROLLAND,
Mr. Justice PANET,
" " AYLWIN,

The Clerk of the Court called the case of—

McPHERSON—Appellant,
and
DINNING—Respondent.

Messrs. HOLT and IRVINE for the Appellant.
G. O. STUART, Esq., for the Respondent.

The Judges confer together, Chief Justice Rolland and Mr. Justice Aylwin exchanging remarks in a low tone.

Mr. JUSTICE AYLWIN—"Mr. Holt, the Court has observed "that, in several cases in which you are concerned, the manner "in which your cases are drawn up is highly objectionable. This

" is not the first occasion that the Court has been called upon to " notice and censure the style and the language in which they are " couched. This offensive mode of addressing the Court is, I have " to state, peculiar to yourself. Your remarks upon the witnesses " are too free, and amount to a libel. This Court will not deny " to the Advocate the right of discussing, in his oral addresses to " the Court, the conduct of parties and of witnesses with the ut- " most freedom, but this Court will not suffer any such offensive " matter to be put on record; a man, for the punishment of his " sins, is brought up as a witness. The Court will not permit re- " flections to be made upon his character, or his credit, which may " remain *in perpetuam, rei memoriam.* You must recollect, sir, " *verba volant, litera scripta manet.*"

MR. HOLT—" With respect to the charge of having placed li- " bellous matter before the Court, I beg leave respectfully to state " that I am not conscious of having committed any such offence. " I submit that while the Advocate is not privileged, by his posi- " tion, gratuitously to make charges upon any individual, or to " cast aspersions upon the character of any person, it is both the " Advocate's right and his duty to comment, with the utmost free- " dom, upon the conduct of any party, or the testimony of any " witness in speaking before the Court, and in written or printed " addresses, without distinction, provided his comments be sup- " ported by the record; and, if his assertions be not so supported, " then he is liable in damages to the party whom he has unwar- " rantably injured.

" The Appellant's Attorneys in the present case have availed themselves of their undoubted right, and have thought that a faithful discharge of their duty to their client, required the exercise of the freedom which they have used, but have not supposed that in so doing, they should be deemed as shewing a want of respect towards this Court."

Mr. Justice ROLLAND—" *Il commence par donner un soufflet à son adversaire.* He calls a witness an underling, and here is an attack upon a very respectable Notary; it is stated that he indulges in the making of protests as a favorite pastime."

Mr. Justice AYLWIN—" In the case of Jones and Anderson, Sir, you begin with this expression—' In the Appellant in this cause the *Téméraire Plaideur* is fully personified '—your very commencement is a sarcasm upon your adversary. This language will not be permitted by the Court—it is unprofessional in the extreme. You have heard, Sir, of Sterne; now Sterne, although a man of genius, was not a character to be imitated; he once in preaching to his congregation selected as the subject of his discourse the text—' It is better to go to the house of mourning than to the house of feasting,' and commenced by saying ' this I deny '—this style was certainly unbecoming to a person in his position, and should not be imitated. The Court will not hear the case which has now been called until the factums shall have been withdrawn and corrected."

Mr. HOLT—In one or two very important particulars the Court is labouring under a slight misapprehension. The use of the word 'underling,' and the attack upon a respectable Notary, charging him with the practice of making protests by way of amusement, have been erroneously attributed to the Appellant's Attorneys—the Court has been examining the factum of my learned friend upon the other side—I beg to state to the Court that the Appellant's Attorneys have had every desire to meet the views of the Court, and they have given evidence of such their desire, when on the first day of Term your honors expressed yourselves dissatisfied with the style and some expressions in the Appellant's factum in the case of Malone and Tate; immediately upon the rising of the Court, I requested Mr. Beaudry, Clerk of the Court, to apply to your honors in chambers in my name, for permission to look over the factums which had been fyled in other cases in which I was concerned, so that I might make such corrections in the style or language as I might find necessary before the cases came on for hearing. Mr. Beaudry returned in a few minutes with the answer, "the Judges say never mind, we will overlook it," or some similar expression.—Mr. Beaudry is present, and can correct me if I am in error.

Mr. Chief Justice ROLAND—The proper way to apply was by a motion in Court.

Mr. HOLT—The Court will permit me to say that the charge of unprofessional conduct which the Court has brought, founded upon the style and contents of the cases alluded to, is a charge in the justice of which I cannot acquiesce—I am acquitted by my conscience of the charge of having, in any way, shewn a want of respect for the Court in drawing these cases—I have studiously avoided making use of any expression which I thought could possibly prove offensive to the Court, and do not hesitate to say that in truth, whatever may be the defects of style, and doubtless they abound, no single expression can be pointed out which indicates a want of respect for the Court—(Mr. Holt was unable to proceed, and was obliged to resume his seat).

Mr. Justice AYLWIN—It is certainly with feelings of very deep regret the Court has made the observations which have given so much pain. The Court appreciates the abilities of the gentleman whom it has thus felt itself called upon to censure, and feels satisfied that the errors upon which the Court has animadverted are the result rather of an excess of zeal for the interests of his clients than of any unworthy sentiments or feelings.

The Honble. R. E. CARON—The Court will permit me to say a few words upon this occasion. The question which has been raised is one materially affecting the profession at large, and it would be well to know what line the Court is desirous of drawing in this matter.—Certainly from all that has transpired in my presence, and from what has fallen from the Court, I must say that I regard as most severe and most unmerited the castigation which the Court has thought fit to inflict upon my *confrere*.—I conceived it to be my

duty as a member of the Bar, to read the factum which has called forth these severe remarks, but I have heard nothing from the Court to justify them.

Mr. JUSTICE AYLWIN,—" And by what right, Sir, do you presume to address the Court in this matter ?"

The Hon Mr. CARON,—" I rise to address the Court, may it please your honors, as *Bâtonnier* general of the Bar of Lower Canada."

Mr. JUSTICE AYLWIN,—" I recognize no such officer or person, and let me tell you, Sir, that I would advise you to reserve your lecture for some other place: the Court will not permit your interference in this matter."

Mr. HOLT,—" As the Court has declared its intention not to hear the appeal in this cause until the factum of the Appellant shall have been withdrawn and corrected according to the views of the Court, and as the Attorney has no right to allow his personal feelings to interfere with his duty to his client, I shall not hesitate to make the required motion, but I take the liberty of declaring, at the same time, that I cannot admit the justice of the censure passed upon me by the Court, and that I respectfully deny the right of the Court to impose the conditions which it has imposed upon the hearing of this case. I protest against this course as an invasion of the rights of the profession, and beg the Court distinctly to understand that in obeying its order in this instance, I yield to force."

Mr. JUSTICE AYLWIN,—" There is no force, Sir, and let me tell you, Sir, that the Court knows well how to cause itself to be respected, and if you are not more careful, Sir, it will have no scruple in using those powers with which it is invested."

Mr. HOLT then moved that the Appellant's Attorneys should be allowed to withdraw their factum and to remove therefrom such expressions as were stated by the Court to be offensive, which motion the Court granted. The Court then adjourned.

TUESDAY, 7th October.

PRESENT:

MR. CHIEF JUSTICE ROLLAND,
" " PANET,
" " AYLWIN.

The Clerk of the Court called the case of—

MACPHERSON—Appellant.

vs.

DINNING—Respondent.

Messrs. HOLT and IRVINE for the Appellant.

G. O. STUART, Esquire, for the Respondents.

Mr. CHIEF JUSTICE ROLLAND,—" Mr. HOLT, the Court observes that the factum in this case has been corrected, and the case can now go on."

Mr. HOLT,—" Before entering upon the merits of this case, the

Court will permit me to state that the Appellant's Attorneys have sought in vain, in their factum, for the offensive language upon which was principally based the extraordinary charge of unprofessional conduct brought against me yesterday. I beg to express my regret that the Court should have thought fit to ground the charge against me upon expressions which were not mine. The Court doubtless now knows where those expressions are to be found. It was elsewhere than in the Appellant's factum that the Court found what it termed the disrespectful and offensive language which called forth the very severe censure of yesterday."

Mr. CHIEF JUSTICE ROLLAND,—" It is not so ; it is not the case."

Mr. JUSTICE AYLWIN (with great heat),—" There is another case, Sir, the case of Jones and Anderson, in which you think fit to begin by being sarcastic upon your adversary ; you think fit to employ sarcasm ; this mode of treating an opponent will not be permitted before this Court, and you shall be taught, Sir, that this Court will punish as disrespectful towards itself, any such style in the printed cases which are presented before it."

Mr. HOLT,—" It will be time enough to discuss the merits of the factum in Jones and Anderson when that case is called."

Mr. JUSTICE AYLWIN,—" Very well, Sir, you will then see that this Court knows how to enforce the respect which is due to it. You shall not be permitted, Sir, to withdraw or correct that factum, and the Court will no longer extend to you that indulgence which has been shewn to you hitherto."

Mr. HOLT,—" I shall be quite prepared for any course which the Court may see fit to take, and now I beg to be permitted to argue the case of Macpherson and Dinning, which has been called."

In the course of the argument, Mr Holt adverted to the very wide discrepancy which existed between the statements of the witnesses on the one side and on the other, and to the necessity of a most careful sifting of the evidence, to ascertain upon which side the truth lay, and asserted that the Court would find that some of the witnesses had strained a great deal to favor their party, when the following dialogue took place.

MR. JUSTICE AYLWIN,—" Let me tell you, Sir, that I sit here " being a judge of the Criminal as well as of the Appeal side of the " Court, and that it is my duty when, in the investigation of a " cause, I find that a party or witness has committed a Criminal " offence, it is my duty, I say, to see that a prosecution is at once " instituted, and carried on ; and you, Sir, as a Lawyer, cannot " stand up here and say that an offence has been committed, unless " you are ready to prove it in a Criminal Court."

MR. HOLT,—" I would respectfully state, that it seems to me " that a prosecution against any party or witness in this cause " could not well be carried out, until the result of the present ap- " peal is known, a jury would hardly convict of perjury, a wit-

" ness whose evidence had been sustained by the judgment of so " high a Court as this Court of Appeals."

MR. JUSTICE AYLWIN,—" And may I ask, Sir, what you know " about a Jury ?"

MR. HOLT,—" Your Honour put a case, and I merely stated my " opinion upon it."

MR. JUSTICE AYLWIN,—"That is your opinion, is it ?"

MR. HOLT,—" That is my opinion."

MR. JUSTICE AYLWIN,—" Then your opinion will go for what it is worth."

MR. HOLT,—" I can hardly expect it to go for more ; but as I " have the honour of wearing a gown, I have taken the liberty of " expressing my opinion, and shall not hesitate to express it, " whenever I consider it my duty or my right so to do." * *

The Clerk of the Court called the cases of

Jones—Appellant
and
Anderson—Respondent
and of
Jones—Appellant
and
Carr—Respondent.

Edward Jones, Esquire, Attorney for the Appellant, G. O. Stuart Esquire, Counsel for the Appellant, Holt and Irvine Attornies for the Respondent

MR. STUART, Counsel for the Appellant, suggested that these cases could not then be called, inasmuch as, the Appellant's factum was not yet fyled, and that the delay for doing so, had not yet expired.

MR. HOLT admitted that the cases could not be called, for the reason stated by Mr. Stuart, but stated that they could properly be called the next morning, as the delay to fyle the Appellants' cases expired that day, and the Appellants' Attorney had the cases prepared and ready to fyle.

CHIEF JUSTICE ROLLAND,—" We think that a sound interpreta- " tion of the Rule of Practice requires that no case shall be placed " upon the roll until both parties have fyled their cases, or until " the party in default shall have been regularly foreclosed, and we " are, therefore, of opinion that the inscription in these cases should " be struck."

MR. HOLT requested permission to say that " no such interpre- " tation had as yet been given by the Court to the Rule under " which the Respondents had inscribed their cases for hearing.— " They had pursued the course laid down by that rule, which de- " clares, that either party whose cases are fyled, may set down " the suit for hearing ; the other party it is true, had ten days " from the fyling of the answer to the reasons of appeal, to fyle " his cases : but the practice of the Court hitherto had been to al- " low the case to remain upon the roll until such time as it could

" be properly called.—In the present cases both parties would be " ready to proceed to argue the appeal the next morning : if the " causes were struck from the roll, a great hardship would be in- " flicted upon the Respondents, who were not in error, and had " only obeyed the Rule of Practice."

Mr. Justice Aylwin,—"No hardship is inflicted upon the Res- " pondent, for he can inscribe anew."

Mr. Holt,—" He can inscribe, but not in time to be heard this " Term.—The Rules of Practice require a notice to the adverse " party of one or two intermediate days."

Mr. Stuart, "If I am rightly informed, the Respondent will not " be much injured by the cause going over to next Term ; he was " Defendant in the Court below, and the action was against him for " rent."

Mr. Holt,—"Yes, we were Defendants in the Court below, bu " this appeal keeps a large amount of our property under seizure."

The Court ordered that the inscriptions in the above causes should be struck.

The Clerk of the Court called the case of

Filmer,—Appellant

and

Bell,—Respondent.

G. O. Stuart Esquire,—Attorney for the Appellant.

Holt and Irvine,— Attornies for the Respondent.

The Hon'ble R. E. Caron, Counsel for the Respondent.

Mr. Stuart had stated his proposition and was arguing it.

Mr. Justice Aylwin—" That point is too plain for argument, " Mr. Stuart, you need not discuss it ; there cannot be a doubt up- " on it—the allegation in the respondent's opposition to which you " alluded, is mere wind."

The Hon'ble Mr. Caron—" I beg that His Honor Mr. Justice " Aylwin will not prejudge the case, and that he will not form his " opinion until we upon the other side shall have been heard."

Mr. Justice Aylwin— " Mr. Caron my opinion is formed, and " I will express it. I would have you to understand that as re- " gards that point, I judge it now," (a short pause), " and if I " were sitting here alone, instead of being associated with two " others, I would decide the point at once."

Mr. Caron—" Very well—very well "

The undersigned submits the above as the statement respecting the late occurrences in the Court of Queen's Bench, Montreal, which has been requested of him by this Section of the Bar.

(Signed) C. G. Holt.

Quebec, 14th October, 1851.

To this narration Mr. Ahern has added—" The statement above written, in the case of Malone against Tate, is correct.

(Signed) John U. Ahern.

And the Honorable Mr. Caron states—" The facts stated by

" Mr. Holt as having taken place on the sixth and seventh days " of October instant, are in substance correct to the best of my re- " collection."

(Signed) R. E. CARON.

Mr. Stuart's statement is as follows—" Having been requested by the Quebec section of the Bar to state what occurred in the matter of Macpherson and Dinning and some other cases in the Court of Queen's Bench at Montreal, between two of the members of the Bench and Mr. Holt, I have to state that being in my place prepared to argue the case of Macpherson and Dinning, when it was called on, Mr. Justice Aylwin arrested its progress by observations to the effect that the Court had already felt itself compelled to animadvert upon the tone and style in which Mr. Holt's cases were drawn up, and was again compelled to do so in the case then before the Court, and that for his part, he would not hear the parties with such cases of record, an opinion in which the Hon'ble Mr. Justice Rolland concurred. Mr. Holt endeavoured to convince the Court, that any intention on his part to act disrespectfully towards it did not exist, that he had prepared the case to the best of his ability, and insisted that there was nothing objectionable in the case. Mr. Justice Aylwin gave him again to understand that there was ; and more particularly referring to the case of Jones and Anderson, said, that his conduct was unprofessional, and that the tone assumed by him in the drawing of his cases was one extremely flippant in its character and would not be tolerated. Upon Mr. Caron interfering with some observations, to the effect that it was desirable that the Bar whose independence was interested in the matter, should know the extent to which the Court intertered in the matter of drawing cases—he was interrupted by Mr. Justice Aylwin, who asked him, whose interests he represented in the case, and after he replied that he addressed the Court as *Bâtonnièr* General of the Bar of Lower Canada, he was informed in a tone of marked severity by Mr. Justice Aylwin, that he did not recognize his right to address the Court in any such capacity. Mr Holt then resumed his remarks, and censure more marked than before was bestowed by Mr. Justice Aylwin, which ended by Mr. Holt acquiescing in the views of the Court, and moving to withdraw the offensive expressions in the case of Macpherson and Dinning—while the above was going on, some conversation between Mr. Justice Rolland and Mr. Justice Aylwin, in an undertone, probably not intended for the Bar, having been overheard apparently by Mr. Holt, from which he seemed to infer, that the matter referred to was not in his case, he seemed desirous to bring out the fact if it were so—and it was then that Mr, Justice Aylwin said that he alluded more particularly to the case of Jones and Anderson.—The next morning the case of Macpherson and Dinning was called, when Mr. Justice Rolland stated to Mr. Holt that he might proceed with the case, as he had scored out the offensive expressions to which the Court

had referred—Thereupon Mr. Holt renewed the discussion, when he was again censured as before, and the matter ended by a reference to the case of Jones and Anderson, when Mr. Holt observed that it would be time to allude to that case when it was called on ; upon which Mr. Justice Aylwin observed to the effect that he would most assuredly do so, and that Mr. Holt should be made to answer for the expressions contained in that case.

(Signed) G. Okill Stuart.

Mr. Irvine's certificate is appended to the statement of what took place in the Court on the 11th of October, 1851, which, together with the certificate, is as follows :—

COURT OF QUEEN'S BENCH.

APPEAL SIDE.

Montreal, 11th October, 1851.

PRESENT:

Mr. Justice Rolland,
" " Panet,
" " Aylwin,

Malone *vs.* Tate.

Mr. Justice Rolland in rendering the judgment in this case, after remarking upon the grounds upon which the Court were forced to reject the plaintiff's evidence, stated " that it was a case of ex-
" treme hardship against him ; and that the Court regretted in
" this case that they should be called upon to enforce a rule
" different from that which had been previously acted upon in the
" District of Quebec, on the subject of an examination of a wit-
" ness on petition, before the return of the action."

Mr. Justice Panet, then proceeded to make the following observations : he stated,—" That he concurred in this judgment with
" great regret—That he hardly remembered a case in which he
" had more regretted the judgment he was forced to give, not that
" he at all doubted what the judgment should be, or the principle
" of it,—there was no other way in which the Court could legally
" act.—But he had seldom seen a case of greater hardship, and
" the state of things disclosed in the evidence for the plaintiff call
" for the interference of the public authorities, and fully justify
" the observations made concerning it in the factum of the appel-
" lants, which had been somewhat severely censured by the hon-
" ourable judge to his left (Mr. Justice Aylwin).—The honoura-
" ble judge here proceeded to read extracts from the factum of the
" appellants, and then proceeded to say,—This statement has
" been said to be libellous—if it be so—it is, however, true—and
" is borne out by the evidence of record, which evidence the ap-
" pellant's attorney, while making the statement objected to, has
" copied into his factum to support it.—Here were poor emigrants

" arrived at Quebec on board an emigrant ship.—The captain pro-
" cures the service of a steamer to land those who wish to do so—
" and to carry the others forward on their voyage.—They were
" brought to the wharf, and there, notwithstanding the crowded
" state of the steamer, they were told they had but ten minutes to
" land.—It was almost impossible for them with their baggage to
" get on shore, and to add to their difficulties, a stout man stood at
" the gangway and pushed them back as they came up.—In con-
" sequence of this conduct, the unfortunate plaintiff had lost his
" box, containing his clothes, his books, and his instruments.—
" Assuredly such conduct as this, must be called by its proper
" name, and the advocate has the right to call it so.— The facts
" fully justify the terms he has used in his factum."

His honour Mr. Justice Aylwin made no other observation than that " the Court by its judgment had opened the door of justice " to the plaintiff, but that he was afraid he would have uphill " work."

The above took place in my presence on the last day of the October Term, 1851, of the Court of Queen's Bench, Appeal Side, at Montreal.

(Signed.) GEORGE IRVINE,
Advocate.

Quebec, 16th October, 1851.

Your Committee have, moreover, carefully examined the factums in the cases of " Malone and Tate"—" Macpherson and Dinning"—and " Jones and Anderson"—which formed the subject of the animadversions of their honours Mr. Justice Rolland and Mr. Justice Aylwin, and more particularly those portions which were especially alluded to by them.—With reference to the factum in the case of Malone and Tate, allusion was particularly made by Mr. Justice Aylwin to the circumstance of there being three notes of exclamation on the sixth page of that document, which he stated would not be tolerated.—In order that the Bar may be fully possessed of the whole of the facts, Your Committee have transcribed the portions of the factum where these notes of exclamation are found, leaving aside, for the moment, the general construction and tone of the whole document—the first portion reads thus—" Mr. Thos. Kelly " is found stating that " after the plaintiff had put his box upon " the rail of the steamboat, HE LEFT *it to get a rope or some one* " *to help him to put it down*, and it WAS THEN *that the box fell and* " *broke.—He* KELLY *saw the* BOX FALL: and Mr. Rutledge is " found describing the box as falling, through *the act of the plain-* " *tiff and one or two other men* who *were trying to let the box down* " *with what appeared to him* (*Rutledge*) *to* BE A ROPE" and stating " that he saw THE BOX FALL, and *that* the *plaintiff had his* " *hand* on THE BOX AT THE TIME."—*Both saw the box fall*, they " say; but according to the one, *the plaintiff had gone away* to get " a rope or some one,—according to the other, the *plaintiff had his*

"*hand on the box and was actually with one or two others, trying to*
"*get it into a sling when it fell ! !.*"

And the other—

"HENRY TATE (the Defendant's brother and Captain of the "Lady Elgin) does not know that the box fell into the water at "all !"

With reference to the case of Macpherson and Dinning, Mr. Justice Rolland declared that Mr. Holt commenced, "*par donner un soufflet à son adversaire,*" that he called a witness "an underling"; and that, moreover, there was "an attack upon a very respectable Notary, who, it was stated, indulged in the making of protests as a favorite pastime." The commencement of Mr. Holt's factum runs thus:—"The present appeal is brought from a judgment rendered in the Superior Court, at Quebec, virtually dismissing the Plaintiff's action, which was founded upon a deed of lease executed between the Plaintiff and Defendant, and was instituted for the recovery of damages, resulting from the Defendant's neglect to fulfil the covenants of the lease."

Your Committee have examined, with the minutest care, the whole of this factum, and now state, with confidence, *that the expressions used by Mr. Justice Rolland, and attributed to Mr. Holt,* AND FOR WHICH THAT GENTLEMAN WAS SO SEVERELY CENSURED, DO NOT OCCUR IN THE FACTUM AT ALL.

The factum in the case of "Jones and Anderson" reads thus: "In the appellant in this cause, the *Téméraire Plaideur* is fully personified," and continues with a statement of the Respondent's case, and concludes thus:—"The point involved in the case is too plain for argument, and the Appellant cannot hope to succeed unless the argumentative parts of the answers upon *faits et articles*, are held equivalent to a legislative enactment introducing a new doctrine, respecting the application of payments."

These are the portions of the factums to which reference was particularly made by the two Honorable Judges, and which called forth the marked censure bestowed upon Mr. Holt. Notwithstanding that no specific allusion was made to any other portion of these documents, your Committee have, nevertheless, felt it to be their duty to consider their general tone as a whole, inasmuch as they have been characterised as light, flippant, and libellous; and having thus laid before you, the statements of facts which occurred in the Court, together with an extract of the precise words, the style and tone of which have been impugned, and pointed out as the cause of the censure, pronounced by the two Judges, against Mr. Holt, your Committee beg leave to offer their observations thereon.

Deeply impressed with the magnitude of the interests confided to our profession, and aware of the necessity that exists that the Advocate should fearlessly maintain the just interests of his client, and exhibit, as powerfully as language will permit, the claims of his party to obtain that justice which he seeks to recover from

the tribunals of his country; and that, in the wise and prudent discharge of this sacred duty, he must rise superior to the consequences he may entail upon himself personally from those who may seek to frustrate the course of justice, and energetically unveil to the Administrators of the law the conduct of the wrong-doer—it is with the greatest alarm that your Committee view the expressions which have fallen from the two honorable judges in question. No lightness or flippancy can be discovered by your Committee in the fact of notes of exclamation being inserted in a factum. In truth, in the case in question, they have been evidently placed to attract more particularly the attention of the Court to what the Advocate conceived to be a patent contradiction; and your Committee hold it to be not only the right, but the duty of the Advocate freely to expose and hold up to condemnation the conduct of those who lay themselves open to the charge of misstatements, or who exhibit an intention to act unjustly. The language of the documents in question is that which the right, the duty, the independence of the Advocate entitled him to use when the facts warrant the denunciation; and we can recognize no distinction between the freedom of an oral address and that of a written statement. The conscientious defender of just rights ought not to hesitate to consign to the comparative privacy of a document, intended for the sole perusal of a Judge, that which he would declare in the hearing of his adversary, nor ought he to refrain from stating in writing to the judge what he would be permitted to state verbally. In vain, indeed, would the victim of a foul wrong seek the assistance of one accustomed to the patient investigation of complicated rights, presumed to be versed in the knowledge of unravelling circumstances concocted to defeat justice, and skilled in the detection of fraud, if the voice of the Advocate were to be stifled by the censure of the Judge while that Advocate was endeavouring to hold up to public execration the system that had been pursued towards the unprotected, when the facts in evidence warranted such a course; or, in the words of an able and learned Judge—"It is no doubt desirable that investigations in Courts should be conducted with all the circumspection and delicacy which characterize the intercourse of social life; but this, in too many instances, would be inconsistent with the vigorous obligations imposed on those who administer justice. A great deal of litigation is produced by the knavery of men; hence the necessity of free and bold examination; vice frequently requires to be stripped of the mantle in which hypocrisy and cunning envelop it, and laid open to the animadversion of justice and the indignation of mankind; but these important objects could not be accomplished, if the ministers whom the law authorizes the parties to employ, were not protected in the discharge of their duty."

The career of the Advocate is marked by the duties he performs for society; from him do the community expect that counsel which will ensure the security and tranquillity of their families.

For the public welfare, he is placed between the tumult of human passions and the tribunal of justice to which he submits the claims of his clients. Responsibility to his client is the principle of his duty. Above the timidity of a silence pernicious to his party, his sphere of action must be marked by a wise and energetic liberty of speech. The weak, the poor, and unfortunate, must find in his voice a shield against oppression and violence, and if the occasion should unfortunately present itself where that liberty is unnaturally restrained, then must he shew himself to be free from the attempted trammellings of an assumed authority, and superior to its domination. To the Judges, as ministers of justice, the bar owe respect; from them is expected a faithful distribution of that justice which it is the province of the Advocate to obtain, and never would this respect be withheld so long as those ministers of justice remain above the force of passion and prejudice; so long as they hear the language of reason, and form their judgments upon the ever pure light of truth. Chosen to render a faithful and incorruptible testimony of the truth, the title of a just man ensures him the public confidence. Free from prejudice, exempt from passion, and by being so, alone able to judge others, he ought never to leave aside that equanimity which causes every object presented to him to be seen in its true light. However exalted the position of the Judge may be, he also owes respect to the Bar; his collaborators in the search of that truth he will be called upon to expound. Members of the same profession, both devoted to the public service; the one rendering decisions to which the law will give execution; the other giving legal advice on matters submitted to him, on which the fortunes and happiness of the community depend. It is while thus regarding the elevated position of the Judge, and the respect due to the character of the Advocate, that we must express our surprise at the observations made by the two honorable Judges. We consider them as an unwarrantable attack upon the independence of the Bar, which, if permitted, would not only render an Advocate unworthy the dignity of a man, but would completely destroy the palladium of the liberties of the people, which it is eminently the province of the Bar to defend. But apart from the light in which the proceedings under consideration must be viewed, your Committee cannot refrain from particularly alluding to the fact, that the censure bestowed upon Mr. HOLT was not so much, if at all, a censure pronounced by the Court of Appeals, but by two individual Judges of that Court. Your Committee distinctly repudiate the right of any individual Judge, in a Court composed of several members, to censure the language of an Advocate. If censure be justly provoked, it can only proceed from the Court or its organ. No Judge should hastily avail himself of his judicial position to attack an Advocate in a place where the right of justification may, by the same Judge, be arbitrarily interdicted. And such conduct would seem to be more reprehensible when the Judge, who assumes the functions of censor, is the junior member of the Court. Not only is such a course subversive of true principle, but it manifestly tends to produce antagonism between the

Judges themselves, and hence at the termination of the term, another Judge of the same Court (Mr. Justice Panet,) justifies the language used by Mr. HOLT in his factum, and states that it was fully borne out by the evidence of record; and yet this is the language and style that Mr. Justice Aylwin did not hesitate to say would not be tolerated. Mr. Justice Panet after due deliberation stated his opinion, in the presence of the Judge who censured Mr. Holt, and that Judge replied not. The President of the Court was present on both occasions and remained silent as to the language of the factum in question.

Even had the factum of Mr. Holt contained language of a nature to justify the interference of the Court, your Committee hold that the manner in which Mr. Justice Rolland and Mr. Justice Aylwin delivered their censure is one loudly demanding the condemnation of the Bar. Without at all entering on the examination of the legal construction of the declaration in the case of Malone & Tate your Committee deplore that a Judge of the highest tribunal in this country, should have so far forgotten the respect due to his own high station, so far forgotten the respect due to a gentleman; so far presumed on the cover of the legal protection afforded by his position, as to use expressions of the nature of those used by him in characterising the first count of the declaration in question. As a member of the same profession and only to be regarded as "*primus inter pares*," the Judge was bound to use those conventional terms which the usages of society require, that language which one gentleman may use to another; but in this respect the language of Mr Justice Rolland is not only wholly at variance with the well recognised usages of society, but is a violation of all courtesy.

Painful as it is for your committee to call in question the motives which appear to have actuated the two honorable judges, they nevertheless cannot shrink from the expression of their conviction that from the whole tenor of the observations made by them and the manner adopted towards Mr. Holt, an *animus* was disclosed against him—this is fully confirmed by the repetition by Mr. Justice Rolland of a statement, the reverse of which has already been shewn to be true, namely, that the obnoxious language attributed to Mr. Holt was to be found in his factum, after that gentleman had intimated that it was to be found elsewhere, and after an interval of a day had occurred to enable the honourable Judge to be assured of his error, when his attention was particularly directed to it —and in the fact of Mr. Justice Aylwin not answering to the statement of Mr. Holt, but changing the subject hastily to another case not then under the consideration of the Court, and generally in the very extraordinary treatment exhibited towards Mr. Holt on the several occasions alluded to in his statement. Fully convinced of the benefits to be derived in the dispensation of justice, from answers to questions submitted by the Court to an advocate, when pleading his cause, for the purpose of detecting the real points at issue, your Committee have remarked with surprise, interruptions on the part of Mr. Justice Aylwin of a nature totally at

variance with those which could tend to such an end, and wholly irrelevant to the subject under the notice of the Court, and which your Committee are of opinion no judge is empowered to use.—Perilous indeed is the position of a young advocate to whom is confided the whole interests of the citizen, if while stating the claims of his party he is confused by interruptions which could only produce an effect calculated to bewilder his faculties, and cause him to hesitate in the clear statement of the question to be solemnly decided; more perilous still the position of the client whose interests are thus needlessly jeopardised.

We have observed with indignation the manner in which another of the members of this section was addressed by the same honourable Judge, when in the legitimate exercise of his duty as one of the senior members of the bar, a position certainly not weakened by the fact of his being the President of the General Council of the Bar of Lower Canada, he rose to maintain the independence of the Bar when attacked. We feel it as an insult to the whole Bar, which has been outraged in the person of its President. To ignore the existence of his office, was to ignore the Law whose officer the Judge himself is.

While commenting upon the proceedings which have thus taken place, your Committee beg respectfully to request the attention of the Bar to a yet more serious and important matter, that of the vital danger of premature judgments; indeed, a subject of overwhelming importance to the public interests and social welfare of the community. After long and painful efforts to arrive at that stage where he may be enabled to state his claims to the obtaining of that justice, on which the happiness of himself and family depends, the suitor at length hopes the hour of justice has arrived—the moment of the decision so feared on one side, so desired on the other, is at length approaching.—The parties await with a species of nervous fear the often irrevocable judgment which decides the destiny of their welfare. The Judge who delivers that decision, will he believe that he has appreciated every thing connected with the important matter before him, because he may have rapidly run over a statement of the different pretensions of the parties, and will he dare upon this superficial apprehension boldly expose before the public the rough production and decision of this hasty examination?—What would become of the interests of the parties, and of the correctness and certainty of judgments, if those who hear them and blush for their temerity were not compelled, not only to save the sacred respect due to justice, but also faithfully to insist on the claims they represent, by enlightening the mind so easily swayed, and becoming in fact the Conductors of the Tribunal appointed to be their guide? The Judge may be often deceived, because a due attention is not given to the circumstances of the case,—the fault is his—the loss, that of the public—the danger, that of the community—never should the public be reduced to have to express a desire that at least the Judge should hear before he pronounces;

equally removed from the opposite extreme, the Judge should never anticipate by impatience, or allow negligently to escape from him, the decision which should be the mature judgment of his mind, and which alone the public can receive with respect.—" In judicando criminosa est celeritas ; ad pœnitendum properat, qui cito judicat," says Seneca—what the public has a right to expect is a solid and indefatigable attention, a perseverance and patience to arrive at the truth, which far fr ·ping at the first superficial apprehension, measures all the ·rtance, embraces all the extent, and searches all the profundity of the subject.—We speak of that maturity of judgment, and if we may add, of that useful caution, which is diffident of its own discoveries, and to which its very facility ought to be a matter of suspicion, by which the truth, rarely the reward of our first efforts, is only obtained by the effectual perseverance of a serious and obstinate reflection. No portion of the public conduct of a Judge is indifferent to the public interest; his time is not his own, it is consecrated to the public good ; and degraded, indeed, becomes the dignity of the Judge, if he precipitates himself into the habit of a sudden and presumptuous liberty of decision, a true specimen of those independent minds, which regard the superiority of the Law, as a servile yoke, beneath which the elevation of their reason disdains to submit. Carried away by the caprice of his ideas, and the erratic inclination of his imagination, the impatient Judge often abandons the consideration of the subject before him, to speak of others nowise connected therewith, and descends to conversations wholly irrelevant and improper in the majestic silence of a public audience: he troubles the attention of the other Judges, and often disconcerts the timid eloquence of the pleader, or, if an effort is made to hear, it soon disappears, and the impatience depicted on his countenance, causes the client to tremble—his Advocate to chill in his hopes. It is under these feelings, that your Committee view, with alarm to the public welfare, the observations made use of by Mr. Justice Aylwin in the case of Filmer and Bell, in which that Judge did not hesitate to say, without ever having heard one word from the opposite party, and that too when requested not to prejudge the case, that his opinion was already formed, and that if he were sitting alone, instead of being associated with two others, he would at once decide the point. Fortunate indeed was the Respondent that the Honorable Judge was not alone ; and yet the point to be so summarily disposed of, and the allegation of which was characterised "as mere wind," was one decided in favor of the Respondent, by the Superior Court of Lower Canada ; and yet, notwithstanding the sanction of that Court, and without having heard the Counsel in support of it, the Honorable Judge thus expressed his opinion of it. The danger of permitting such a course, is pregnant with consequences too serious to the community, not to induce the Bar to prevent, by every legitimate means, its recurrence.

In conclusion, your Committee cannot refrain from observing that they view the general tenor of these proceedings on the part of the two Judges as derogatory to the dignity and character of the Bar,

and that such occurrences are unknown and would not be tolerated elsewhere, and ought not to be tolerated here. Aware that both the Bench and the Bar are essentially necessary to the administration of justice, and that the beneficial discharge of the duties of the one, without the assistance of the other, is impracticable, your Committee cannot but foresee the greatest danger to the public interest if such occurrences be renewed. That a good feeling should exist between them, and a mutual respect be entertained, is most desirable; but this respect has never prevented the Bar from asserting their rights or vigorously maintaining them, when they have been denied or violated. The history of our profession abounds with proofs of their determination in this matter. The Bar, be the result what it may, is bound to preserve its independence and honor; if they be impaired, the consequence may be the destruction of one or the other branch of the profession; but the duty of the Bar is to resist aggression and persist in the maintenance of their rights as the advocates of the people. In the words of Pasquier, we conclude, by saying to you—"Vous devez vous effoicer de conserver à notre ordre le rang et l'honneur que vos ancêtres lui ont acquis par leur mérite et par leurs travaux, pour les rendre à vos successeurs."

The whole, nevertheless, respectfully submitted.

J. CHABOT,
L. G. BAILLAIRGÉ,
ULRIC J. TESSIER,
THOS. POPE.

Quebec, 13th November, 1851.

Upon motion of John U. Ahern, Esq., seconded by J. Thomas Taschereau, Esq. it was—

RESOLVED,—That the Report of the Committee be now received and adopted.

And upon motion of Ulric J. Tessier, Esq., seconded by John Young, Esq., it was further—

RESOLVED,—That the Report be published in the newspapers, and also in pamphlet form, under the direction of the same Committee.

The meeting then adjourned.

Certified, C. DELAGRAVE,
Secretary.